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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Reexamination of Comparative Standards for) MM Docket No. 95-31
Noncommercial Educational Applicants)
)
To: The Commission)

REQUEST TO ESTABLISH NEW "SUPPLEMENT DATE"
FOR MUTUALLY EXCLUSIVE APPLICANTS FOR
NONCOMMERCIAL EDUCATIONAL STATIONS

JPI Radio, Inc., which has applied for a new noncommercial educational ("NCE") station at Strasburg, Colorado, proposes that the Commission establish a new "Supplement Date" with respect to pending NCE comparative proceedings. Establishing a new Supplement Date would ensure that the Commission's decisions in pending NCE cases would be based on current information, rather than data that now is more than three years old.

I. Background

On April 21, 2000, the Commission issued its *Report and Order* in this proceeding, 15 FCC Rcd 7386 (2000), in which it established a comparative point system to choose among conflicting NCE applications. On February 28, 2001, the Commission affirmed and clarified its point system. *Memorandum Opinion and Order in MM Docket No. 95-31*, 16 FCC Rcd 5074 (2001) (hereinafter "*MO&O*"). Pursuant to the *MO&O*, the Mass Media Bureau released a Public Notice on May 22, 2001 (DA 01-729), in which it set June 4, 2001, as the deadline for every NCE applicant in each

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group of mutually exclusive NCE applicants to file either a settlement or a supplement claiming the points to which the applicant is entitled under the new rules.

With respect to settlements filed before the supplement deadline, the Commission waived the reimbursement limitations of Section 73.3525(a) of the rules.

With respect to non-technical matters, the "snap shot" date would be the date of the supplement (*i.e.*, June 4, 2001). With respect to an applicant's technical proposal, its points would be calculated on the basis of the technical proposal on file as of the B cut-off date in a particular proceeding or, if there was no B cut-off date, April 21, 2000, the release date of the initial *Report and Order* in this proceeding. *MO&O* ¶¶ 30-31.

In the *MO&O* the Commission said that to the extent possible it would use a "recent date" for the purposes of taking a snap shot of each applicant's qualifications. It added, "As a result, we will be able to consider recent information rather than information that may be several years old." *MO&O*, ¶ 30. June 4, 2001, was also the date that applicants were to use for calculating population data for Section 307(b) determinations. *Id.*

The Commission made clear that if an applicant unconditionally withdrew previously filed applications or consummated approved assignments of existing stations prior to the supplement date, those stations would not count against the applicant for purposes of a tie breaker, regardless of how many applications or authorizations it may have held at the time its original application was filed.

In a Public Notice released May 24, 2001 (DA 01-1245), the Mass Media Bureau extended the deadline for filing supplements and settlements to July 19, 2001. The snap shot date remained June 4, 2001, however.

The FCC's point system for choosing among mutually exclusive NCE applicants was appealed to the United States Court of Appeals for the District of Columbia Circuit in *American*

Family Association, Inc. v. FCC (Docket No. 00-1310). Not until May 11, 2004, did the Court of Appeals affirm the Commission's adoption of the point system. During the time that the appeal of the point system was before the Court, the FCC elected not to issue any decisions choosing winners among mutually exclusive NCE FM applicants.

In the wake of the Court's decision, the Media Bureau has opened a new "settlement window," which will close August 13, 2004. In a Public Notice released June 15, 2004 (DA 04-1692), the Bureau announced that the reimbursement cap of Section 73.3525(a) again would be waived with respect to settlements filed during the window. The Bureau, however, did not establish a new snap shot date with respect to applicants' comparative points. Accordingly, with respect to those NCE cases that do not settle, the comparative choice will be made on the basis of data now more than three years old.

II. A New Snap Shot Date Should be Set

In establishing the snap shot date of June 4, 2001, the Commission recognized the value of deciding important NCE cases on the basis of fresh information. Given the unexpectedly long time between the original supplement date and the Court of Appeals decision affirming the use of the Commission's point system, the public interest would be served by gathering updated data upon which the Commission will decide which NCE applicants, among the various groups of conflicting proposals, will win construction permits.

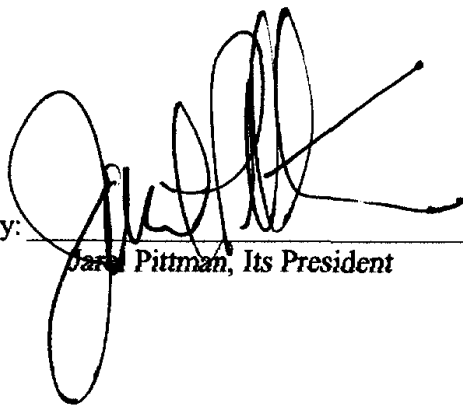
For example, as of the original "snap shot" date of June 4, 2001, JPI held eight existing authorizations (one full-power NCE station and seven NCE translators) and ranked second under the "Existing Authorizations" tie breaker to Mary V. Harris Foundation (BPED-19980420MJ), which at the time was attributed with two full-power stations. JPI now has no attributable interest in any broadcast station, while the number of stations attributable to Mary V. Harris Foundation has risen

to three. In the Strasburg case, the changes that have occurred in the three years since the parties filed their supplements are decisional. If the tie breaker mechanism is to have any real relationship to the public interest, current data should be used to make the critical choice between applicants.

Moreover, by establishing a new snap shot date and requiring each pending mutually exclusive NCE applicant to file a refreshed supplement, the Commission will ensure that only those applicants that are still interested in obtaining a construction permit will be given consideration. Applicants that do not file an updated supplement would be dismissed, thereby simplifying the Commission's task of choosing among the remaining competing applicants. Furthermore, following such a procedure would help make certain that after a construction permit is awarded, the station actually will be built. If no new input is required from applicants, it is very possible that the winning applicant, who was ready, willing and able to go forward with construction in 2001, may have lost interest in the project or even been disbanded. Furthermore, given the fact that the settlement window will remain open until August 13, 2004, establishing a new supplement date will not significantly delay the processing of those NCE groups that remain. Indeed, JPI suggests that August 13, 2004, be set as the date for filing of updated comparative supplements.

To conclude, the Commission was correct in 2001 in setting a snap shot date so that decisions in NCE comparative cases could be made on the basis of current data. Given the long delay between that snap shot date and the commencement of the "paper hearing" process, fairness, good sense and the public interest should lead the Commission to set a new snap shot date. The new point supplement date would cover all the information for which the snap shot was taken on June 4, 2001. As the Commission determined initially, an applicant's technical proposals should remain frozen as of the B cut-off date for that applicant or, if there was no B cut-off date, April 21, 2000.

JPI RADIO, INC.

By: 
Gary Pittman, Its President

JPI Radio, Incorporated
P.O. Box 577
Calimesa, CA 92320

June 24, 2004

CERTIFICATE OF SERVICE

I, Jarel Pittman, hereby certify that on June, 24, 2004, copies of the foregoing **REQUEST TO ESTABLISH NEW "SUPPLEMENT DATE" FOR MUTUALLY EXCLUSIVE APPLICANTS FOR NONCOMMERCIAL EDUCATIONAL STATIONS** were hand-delivered or mailed first-class, postage prepaid, to the following:

Chairman Michael K. Powell*
Federal Communications Commission
The Portals, Room 8-B201
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Kathleen Q. Abernathy*
Federal Communications Commission
The Portals, Room 8-B115
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Michael J. Copps*
Federal Communications Commission
The Portals, Room 8-A302
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Kevin J. Martin*
Federal Communications Commission
The Portals, Room 8-A204
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Jonathan S. Adelstein*
Federal Communications Commission
The Portals, Room 8-C302
445 Twelfth Street, S.W.
Washington, DC 20554

W. Kenneth Ferree, Bureau Chief*
Media Bureau
Federal Communications Commission
The Portals, Room 3-C740
445 Twelfth Street, S.W.
Washington, DC 20554

Peter H. Doyle, Division Chief*
 Audio Division
 Federal Communications Commission
 The Portals, Room 2-A360
 445 Twelfth Street, S.W.
 Washington, DC 20554

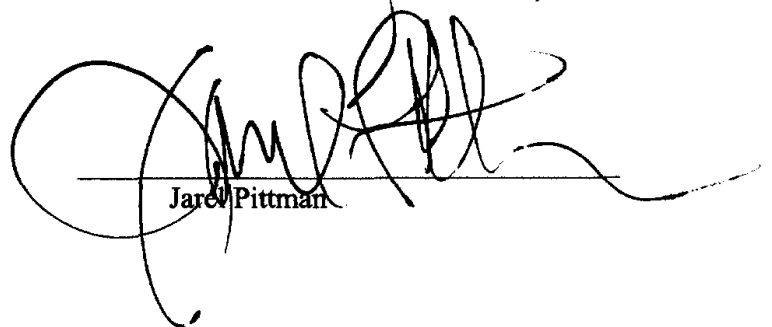
Irene Bleiweiss*
 Mass Media Bureau
 Federal Communications Commission
 The Portals, Room 2-A525
 445 Twelfth Street, S.W.
 Washington, DC 20554

George Gwinn*
 Mass Media Bureau
 Federal Communications Commission
 The Portals, Room 2-A236
 445 Twelfth Street, S.W.
 Washington, DC 20554

Donald E. Martin, Esq.
 Donald E. Martin, P.C.
 Post Office Box 8433
 Falls Church, VA 22041
 Counsel for MARY V. HARRIS FOUNDATION

CSN International
 3232 West MacArthur Blvd.
 Santa Anna, CA 92704

Stephen C. Simpson, Esq.
 Law Office of Stephen C. Simpson
 1090 Vermont Avenue, NW, Suite 800
 Washington, D.C. 20005
 Counsel for BROADCASTING FOR THE CHALLENGED, INC.



Jared Pittman

* Hand Delivered